

# **EXHIBIT A**

**Picard v Merkin**

**Weingarten 7/15/2015**

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,  
  
Debtor.

Adv.Pro.No.  
08-01789 (BRL)

-----x  
IRVING H. PICARD, Trustee for the  
Liquidation of Bernard L. Madoff  
Investment Securities LLC,

Plaintiff,

Adv.Pro.No.  
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,  
L.P., ARIEL FUND LTD., ASCOT  
PARTNERS, L.P., GABRIEL CAPITAL  
CORPORATION,

Defendants.

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VIDEOTAPED DEPOSITION  
OF JEFFREY M. WEINGARTEN

\* \* \*

TRANSCRIPT of testimony as reported  
by NANCY C. BENDISH, Certified Court Reporter,  
RMR, CRR and Notary Public of the State of  
New York, at the offices of Baker Hostetler,  
45 Rockefeller Plaza, New York, New York, on  
Wednesday, July 15, 2015, commencing at 10:10 a.m.

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1 the money sometime and I managed it for three or  
2 four years.

3 Q. Mr. Weingarten, you mentioned that  
4 you're aware that Mr. Merkin took some investors  
5 to meet with Mr. Madoff. Do you recall that?

6 A. I'm sorry, would you say that  
7 again.

8 Q. Do you recall that you mentioned  
9 that you were aware that Mr. Merkin took some  
10 investors to meet with Mr. Madoff? Do you  
11 recall that?

12 A. Yes.

13 Q. If a particular investor had  
14 voiced concerns to Mr. Merkin about investing  
15 with BLMIS or Mr. Madoff, what would you -- what  
16 would you expect Mr. Merkin to do with that  
17 information, or that concern?

18 A. I guess it would depend on what  
19 the concern was and -- I guess it would depend  
20 on what the concern was. So, again, I can speak  
21 from my own experience. There were a lot of  
22 people with whom I discussed my investment  
23 philosophy and process and procedures. And  
24 there were people who thought that in my case I  
25 had a very focused approach to investing. I

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1 would only have 25 or 30 positions at any one  
2 time, and there were investors who would come to  
3 see me and say they were not happy with the fact  
4 that my fund was too narrow, or they were  
5 unhappy with my degree of exposure at any one  
6 time to the markets. And I understand that.

7 Lots of people have different  
8 ideas about how one should invest or have  
9 different ideas about the markets at the time.  
10 And they would act accordingly. It doesn't mean  
11 that I'm going to change what I'm doing.

12 So, for example, when Mr. [REDACTED]  
13 decided that he thought Europe was not an  
14 attractive place to be, he did something about  
15 it. Not what I would have done, but...

16 So, my experience over 40 years of  
17 investing is that if you put 40 people in a  
18 room, you'll get 42 opinions on how it should be  
19 done. And at any given point you're going to  
20 either agree with them or you're going to just  
21 do what you do, and that will be based on what  
22 you believe is the right way to do it and based  
23 on your knowledge of how you think you can make  
24 money.

25 Q. When you are investing in a hedge



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1 fund, if a client came to you and said that he  
2 or she had concerns about the investment in a  
3 hedge fund, what would you do?

4 A. Again, it would depend on what  
5 that concern was.

6 Q. Okay.

7 A. So, if -- I'll give you an example  
8 now. I'm a trustee on a trust and we  
9 interviewed a number of hedge funds to invest  
10 our money, and one of the hedge funds that we  
11 invest the trust in is a hedge fund that I  
12 actually have money with personally. It's no  
13 conflict of interest, it's all disclosed, and  
14 indeed two other trustees also have money. And  
15 one of the trustees raised a concern that this  
16 particular hedge fund manager was only about 60  
17 percent invested, and he thought that was a  
18 concern of his.

19 Well, I knew the fund manager, I  
20 knew what his thinking was, I knew why he was  
21 only 60 percent invested, and I said, look, I  
22 believe in what this guy's doing. He could only  
23 find ideas to fill up 60 percent of the fund,  
24 and I don't want to push him to go to 80 percent  
25 and then invest in his 15th best idea.

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1                   So, again, it would depend on what  
2   the concern was and what I thought this person's  
3   knowledge base was about the fund manager versus  
4   my knowledge base of the fund manager.

5           Q.       And was your knowledge base of the  
6   fund manager based on your discussions with that  
7   fund manager?

8           A.       Yes, absolutely. My discussions  
9   with the fund manager, with the fact that I've  
10   had money with him now for a number of years, I  
11   understand what his philosophy is, understand  
12   how he goes about it. We've had extensive  
13   conversations about how he's doing, what he's  
14   doing, individual securities that he's invested  
15   in.

16                   So, I felt that the concern he  
17   raised was, number one, not particularly  
18   legitimate and, number two, based on what I knew  
19   about what the fund manager was trying to do and  
20   what his approach was, I just disagreed with his  
21   objection.

22           Q.       Are you aware that there was  
23   investors of Mr. Merkin's funds who raised  
24   concerns that the funds were invested with  
25   BLMIS?

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1 MR. STEINER: Objection to form.

2 A. I don't have any -- I don't have  
3 any recollection of that, but I don't remember  
4 any -- I don't remember seeing anything that  
5 specifically raised that issue.

6 Q. Are you aware that investors as  
7 early as 1995 raised concerns about the  
8 consistency of concerns -- of the BLMIS returns?

9 MR. STEINER: Objection to form.

10 Q. To Mr. Merkin?

11 MR. STEINER: Same objection.

12 A. Again, I don't -- I'm not aware of  
13 any specific objections about consistency or...

14 Q. If an investor had raised the  
15 concern to Mr. Merkin about the consistency of  
16 returns, BLMIS returns, what would you expect  
17 Mr. Merkin to do?

18 A. I'm not sure I would expect him to  
19 do anything. I'm not sure if the consistency of  
20 returns was something that was a new concept to  
21 Mr. Merkin. I'm not sure that consistency of  
22 returns was something that he didn't expect to  
23 see in this. So, again, I'm not sure whether  
24 this represented new information to him,  
25 unexpected information.